

REMARKS

By this amendment, Applicants have amended claims 1, 7, 14, 16, and 21. As a result, claims 1-23 are pending in this application. These amendments are being made to facilitate early allowance of the presently claimed subject matter. Applicants do not acquiesce in the correctness of the objections and rejections and reserve the right to pursue the full scope of the subject matter of the original claims, or claims that are potentially broader in scope, in the current and/or a related patent application. Reconsideration in view of the following remarks is respectfully requested.

Initially, Applicants thank the Examiner for her time and courtesy extended to Applicants' undersigned representative during a telephone interview conducted on 19 September 2007. During the telephone interview, the rejection of claim 1 and the Examiner's interpretation of the teachings of U.S. Patent Application Publication No. 2004/0111509 (Eilam) were discussed. No exhibits were presented during the telephone interview. No agreement was reached as a result of the telephone interview, the substance of which is included in the following remarks.

In the Office Action, the Office rejects claims 1 and 3 under 35 U.S.C. § 101 as allegedly being directed to an abstract idea. By this response, Applicants have, *inter alia*, amended claim 1 to include writing the anticipated benefit for each process to a recordable medium as suggested by the Examiner. As a result, Applicants respectfully request withdrawal of the rejections of claims 1 and 3 under 35 U.S.C. § 101.

Further, the Office rejects claims 16-20 under 35 U.S.C. § 101 as allegedly lacking the necessary physical articles or objects to constitute a machine or manufacture. By this response,

Applicants have, *inter alia*, amended claim 16 to expressly state that the invention is a computer system for managing processes. As a result, Applicants respectfully request withdrawal of the rejections of claims 16-20 under 35 U.S.C. § 101.

Further, the Office rejects claim 14 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. By this response, Applicants have, *inter alia*, amended claim 14 to expressly state that the lag time indicates a difference between an actual execution time and a desired execution period for the first process. As a result, Applicants respectfully request the withdrawal of the rejection of claim 14 under 35 U.S.C. § 112, second paragraph.

Further, the Office rejects claims 1-18 and 21-23 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent Application Publication No. 2004/0111509 (Eilam). In order to maintain a proper rejection under 35 U.S.C. § 102(e), the Office must show that a single reference discloses each feature of the claimed invention. Applicants submit that Eilam fails to disclose every feature of the claimed invention.

For example, with respect to claim 1, Applicants respectfully submit that Eilam fails, *inter alia*, to disclose determining a set of lagging processes, each lagging process running behind a target schedule. As discussed during the telephone interview, Eilam provides an approach for the dynamic allocation of servers to customers in a server farm. Eilam, Abstract. In Eilam, the allocation seeks to maximize the total revenue of the server farm. *Id.* In particular, servers are allocated according to an expected workload as well as the current workload. Eilam, paragraph 0020. The Examiner equates the requests in Eilam, which are used to determine workload, to the claimed lagging processes.

In amended claim 1, Applicants expressly define a lagging process as a process that is running behind a target schedule. Applicants note that Eilam does not include any discussion of a target schedule for a process, only a target number of servers for a given workload. Eilam, paragraph 0022. Further, Applicants have amended claim 1 to expressly state that the anticipated benefit for each process includes an anticipated performance improvement to the process should the set of available resources be allocated as additional resources for the process. Again, Applicants note that Eilam lacks any discussion with respect to a performance improvement for a process.

In light of the above, Applicants respectfully request withdrawal of the rejections of claim 1 and claims 2-6, which depend therefrom, as allegedly being anticipated by Eilam.

With respect to claim 7, Applicants respectfully submit that Eilam fails, *inter alia*, to disclose determining an anticipated benefit for the set of available resources for each process based on learned benefit knowledge as in claim 7. By this response, Applicants have amended claim 7 to expressly define each process as executing on a computer system. In the rejection, the Examiner interpreted customers generating requests as processes, which are clearly distinct from processes executing on a computer system. For example, a single process could respond to multiple requests and/or multiple types of requests. Similarly, a single request could require multiple processes to generate a response.

Further, Applicants have amended claim 7 to expressly state that the anticipated benefit for each process includes an anticipated performance improvement to the process should the set of available resources be allocated as additional resources for the process. In the rejection, the Office cites portions of Eilam directed to determining expected revenue, which are unrelated to

an anticipated performance improvement for a process. Still further, Applicants have amended claim 7 to expressly state that the learned benefit knowledge includes information on at least one previous allocation of resources for each process. In the rejection, the Office cites portions of Eilam directed to past long term forecast residuals, which are unrelated to previous allocations of resources.

In light of the above, Applicants respectfully request withdrawal of the rejections of claim 7 and claims 8-15, which depend therefrom, as allegedly being anticipated by Eilam. Additionally, Applicants note that claims 16 and 21 include features similar to those discussed above with respect to claim 7. To this extent, Applicants herein incorporate the arguments presented above with respect to claim 7 for claims 16 and 21. As a result, Applicants also respectfully request withdrawal of the rejections of claim 16 and claims 17-18, which depend therefrom, and claim 21 and claims 22-23, which depend therefrom, as allegedly being anticipated by Eilam.

Further, the Office rejects claims 19-20 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Eilam in view of U.S. Patent Application Publication No. 2002/0135611 (Deosaran). Applicants note that the Office relies on its rejection of claim 16 from which these claims depend. To this extent, Applicants herein incorporate the arguments presented above with respect to claim 16. Further, Applicants note that the addition of Deosaran even if, *arguendo*, proper, fails to address the deficiencies of Eilam discussed above. As a result, Applicants respectfully request withdrawal of the rejections of claims 19-20 as allegedly being unpatentable over Eilam in view of Deosaran.

Applicants submit that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicants do not acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary and/or in a related patent application, either of which may seek to obtain protection for claims of a potentially broader scope.

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

/John LaBatt/

John W. LaBatt, Reg. No. 48,301
Hoffman, Warnick & D'Alessandro LLC
75 State Street, 14th Floor
Albany, NY 12207
(518) 449-0044 - Telephone
(518) 449-0047 - Facsimile

Dated: 24 September 2007